

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDICE D. MATTHEWS,

Plaintiff,

v.

AMERICAN HERITAGE LIFE
INSURANCE COMPANY,

Defendant.

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C.A. NO. 4:20-CV-1480

DEFENDANT'S INDEX OF STATE COURT DOCUMENTS

	<u>State Court Document</u>	<u>Date Filed</u>
1.	Harris County Docket Sheet	04/27/2020
2.	Plaintiff's Original Petition and Request for Disclosure	03/20/2020
3.	Certified Mail Tracking Number 7019 0140 0000 5910 8577	04/06/2020
4.	Service of Process on American Heritage Life Insurance Company	04/13/2020
5.	Defendant's Original Answer	04/24/2020

EXHIBIT B

Dated: April 27, 2020

Respectfully submitted,

By: /s/ Andrew G. Jubinsky

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the parties listed below on April 27, 2020.

Via CM/RRR:

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/s/ Andrew G. Jubinsky

Andrew G. Jubinsky

HCDistrictclerk.com

**MATTHEWS, CANDICE D vs. AMERICAN HERITAGE
LIFE INSURANCE**

4/24/2020

Cause: 202018503

CDI: 7

Court: 234

DOCUMENTS

Number	Document	Post Jdgm	Date	Pgs
90347388	Defendant's Original Answer		04/24/2020	2
90191148	Certified Mail Tracking Number 7019 0140 0000 5910 8577		04/06/2020	2
89992064	Plaintiffs original petition and request for disclosure		03/20/2020	19

CAUSE NO. _____

CANDICE D. MATTHEWS	§	IN THE DISTRICT COURT
	§	
vs.	§	
	§	_____ RD JUDICIAL DISTRICT
	§	
AMERICAN HERITAGE LIFE INSURANCE	§	HARRIS COUNTY, TEXAS
COMPANY	§	

PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE

A. Discovery-Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 because the amount of relief requested exceeds \$50,000.00.

1a. Rule 47 Statement

Plaintiff's claims concern acts, Deceptive Trade Practices, Fraud and Breach of Contract, committed by Defendant, American Heritage Life Insurance Company, for which Plaintiff seeks damages that are within the jurisdictional limits of this Court. Plaintiff seeks monetary relief over \$100,000.00 but not more than \$1,000,000.00, and all other relief to which she may be justly entitled.

B. Parties

2. a. Plaintiff, Candice D. Matthews, an individual, is a resident of Harris County, Texas.
3. a. Defendant, American Heritage Life Insurance Company, is life insurance company doing business in Texas and selling life insurance policies, and may be served with process via Defendant's agent for service, by serving C. T. Corporations System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

C. Jurisdiction

4. The court has jurisdiction over the lawsuit because the amount in controversy exceeds this court's minimum jurisdictional requirements.
5. The court has jurisdiction over the lawsuit under Texas Civil Practice & Remedies Code section 15.035 (b) based on a consumer transaction to be performed in Harris County and the

agreement was entered into in Harris County.

D. Venue

6. Venue for this suit under the Deceptive Trade Practices Act (DTPA) is proper in Harris County under Texas Business & Commerce Code section 17.56 (2) and Texas Civil Practice & Remedies Code section 15.035 (b) based on a consumer transaction to be performed in Harris County, the service agreement was entered into in Harris County, and the defendant solicited the transaction made the subject of the action at bar in Harris County, Texas.

E. Facts

7. On or about February 21, 2014, Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, were married.

8. Eleven (11) months later, on or about January 29, 2015, Applicant/Plaintiff made out an application for Life and Health Insurance with Defendant American Heritage Life Insurance Company.

9. On or about March 24, 2016, Decedent, Rodrin R. Hinton, died while in the custody of Harris County Jail.

10. Applicant/Plaintiff obtained a death certificate on or about July 5, 2016.

11. Decedent's cause of death was undetermined.

12. On or about January 29, 2015, Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, was to have been employed by Rodrin Hot Shot, Inc., to be a family owned business.

13. However, rather than incorporate this new business, Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, decided to incorporate under another name, family owned business R T Way Logistics, Inc., Articles of Incorporation filed April 8, 2015.

14. R T Way Logistics, Inc., was incorporated April 8, 2015, after the parties were married and approximately two (2) months after Applicant/Plaintiff made out an application for Life and Health Insurance with Defendant American Heritage Life Insurance Company.

15. On the application for Life and Health Insurance with Defendant American Heritage Life Insurance Company, is the section "Complete This Section for Persons to Be Insured."

16. In the proposed insured section, the proposed insured is identified as Rodrin R. Hinton, spouse.

17. In the section 'Complete This Section For The Person To Be Insured', the section for Employee identifies Employee, identified in Employee Section, as Candice Hinton.

18. In the section 'Complete This Section For The Person To Be Insured', the section for Spouse identifies Rodrin Hinton. Neither section is ever modified or corrected from January 29, 2015 to the date of Rodrin Hinton's death March 24, 2016.

19. Rodrin Hot Shot, Inc. is never incorporated. As such, the public records for the State of Texas and Harris County did not show the business entity Rodrin Hot Shot, Inc.

20. In the section 'Complete This Section For The Person To Be Insured', the section contains the section identified as 'Actively Work'.

21. The application defines 'Actively Work' as:

"Actively at work means that he/she is actively at work now for wage or profit and has worked at least 20 hours each week performing all duties at his /her regular occupation at his/her regular place of employment for the last 3 months except for minor illness or injury of 1 week or less, or normal pregnancy."

22. Three (3) months prior to January 29, 2015, include the months: October 2014, November 2014, December 2014 and January 2015.

23. Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, submitted in response to her claim to Allstate Benefits, the following proof of Decedent's employment:

1. Employer All My Sons, Sept. 22, 2014 – Nov. 3, 2014 – 112.875 hours;
2. Employer All My Sons, W-2 2014, Wages \$1,128.75
3. Self-employed R T Way Logistics, Inc.
4. In addition, that Decedent was employed with 'Two Men and A Truck' for the period Feb. 4 – Feb. 28, 2016.

24. For each entity identified above, for the months identified in ¶ 16 above, Decedent actively worked for wage or profit and worked at least 20 hours each week performing all duties at his regular occupation at his regular place of employment.

25. Again, on or about March 24, 2016, Decedent, Rodrin R. Hinton, died while in the custody of Harris County Jail as a result of callous indifference and/or conscious indifference of policies, practices and actions of Harris County officials, Nurse Cooper and various Harris

County employees.

26. On July 13, 2016, 11 days after the certificate of death is issued and 18 months after having made application and paid premiums for the subject life insurance policy, Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, submitted her claim to Allstate Benefits.

27. On July 14, 2016, Allstate Benefits requested 'Copy of Mr. Hinton's 2014 and 2015 Income Tax return.

28. On November 1, 2016, Allstate denied the claim for the following reasons:

1) On 8/26/16 Ms. Hinton stated in a statement 'Re: Employment verification for Rodrin R. Hinton, Rodrin R. Hinton was not employed ... I was the only one working in the home.'

2) In a phone call to our office on 8/22/16 Ms. Hinton relayed, "Mr Hinton did not work in 2014 and 2015 and did not file taxes for those years as stated on the letter received on 7/26/16. She sent her taxes to show that he didn't even file with her."

3) July 26, 2016 Letter from Candice Hinton in reply to our request for 2014 and 2015 tax returns for Mr. Hinton: "Re Rodrin's 2014- and 2015-Income Tax returns. Rodrin did not file taxes for both of those years."

29. Defendant returned premiums paid by Plaintiff on Nov. 17, 2016, in the sum of \$1,813.76. This check remains un-negotiated by Plaintiff.

30. The Application and definition do not expressly require:

a. that Mr. Hinton earn money; and/or

b. that Mr. Hinton file taxes for the 3 months prior to Jan. 29, 2015; and/or

31. The definition agreement expressly provide that - for the months October 1 - December 31, 2014 and for the month of January 1 - 29, 2015 - the Decedent (i) actively work for wage or profit and (ii) has worked at least 20 hours each week performing all duties at his /her regular occupation at his/her regular place of employment for the last 3 months.

32. The documents in Defendant Allstate's possession reflect that the Decedent was employed, and self-employed, working for All My Sons Moving and Storage and RT Way Logistics for the stated period.

33. The definition does not expressly contractually require the Decedent to have earned money but that he actively work for wage. There is no requirement that Decedent file taxes for either 2014 and/or 2015.

34. Plaintiff has previously made demand for payment of \$150,000.00 and previously placed Defendant on notice of claim for breach of contract and violation of the Texas Deceptive Trade Practices Act.

35. Plaintiff, again on Feb. 26, 2020, placed Defendant on notice for:

- a. Texas Insurance Code, Sec. 541.003, Unfair Methods of Competition and Unfair or Deceptive Acts or Practices
- b. Texas Insurance Code, Sec. 541.051, Misrepresentation Regarding Policy or Insurer (B) the benefits or advantages promised by the policy),
- c. Texas Insurance Code, Sec. 541.060, Unfair Settlement Practices:
 - (a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:
 - (1) misrepresenting to a claimant a material fact or policy provision to coverage at issue;
 - (2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement;
 - (3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;
 - (9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person.

36. Pursuant to Sec. 541.151, Private Action for Damages Authorized, a person who sustains actual damages may bring an action against another person for those damages caused by the other person engaging in an act or practice: (1) defined by Subchapter B to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; or (2) specifically enumerated in Section 17.46(b), Business & Commerce Code,

as an unlawful deceptive trade practice if the person bringing the action shows that the person relied on the act or practice to the person's detriment.

37. In addition to the above, per Sec. 541.152, Damages, Attorney Fees and Other Relief, (a) A plaintiff who prevails in an action under this subchapter may obtain: (1) the amount of actual damages, plus court costs and reasonable and necessary attorney's fees; (2) an order enjoining the act or failure to act complained of; or (3) any other relief the court determines is proper. (b) Except as provided by Subsection (c), on a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.

38. On February 26, 2020, Plaintiff's DTPA Notice letter was sent to Defendant – in writing – both by regular mail and certified mail demanded that Defendant – in writing:

a. contact Plaintiff's attorney this office within sixty (60) days of his receipt of this letter, so the parties might avoid unnecessary time, expense and additional attorney fees in the further litigation of this matter.

b. That Defendant was demanded to pay \$150,000.00 of \$5,000.00, and attorney's fees of \$7,500.00 – for a total of \$157,500.00.

39. As of March 18, 2020, has not responded.

40. To date, Defendant has failed to perform as agreed.

41. Plaintiff assert that Defendant engaged in breach of contract, and deceptive trade practices.

42. Plaintiff asserts that it would appear to be the practice of Defendant to represent his ability to perform to build/construct a food trailer, then breach, relying on delay to make good his avoidance.

43. Plaintiff asserts that Defendant intentionally withheld performance and deceived Plaintiff concerning Defendant's nonperformance.

44. Plaintiff sues for payment of \$150,000.00, plus treble damages, court costs and attorney's fees.

F. Count 1 – DTPA Claim

45. Plaintiff, Candice D. Matthews, is a consumer under the DTPA.

46. The DTPA defines a "consumer" in pertinent part as "an individual, partnership,

corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services."

47. Plaintiff both sought and acquired life insurance on the life of her husband, Rodrin R. Hinton, via policy 90AV54085U, from Defendant American Heritage Life Insurance Company.

45. Defendant, American Heritage Life Insurance Company, is life insurance company doing business in Harris County and may be sued under the DTPA.

46. On or about January 29, 2015, Applicant/Plaintiff made out an application for Life and Health Insurance with Defendant American Heritage Life Insurance Company.

47. A life insurance policy for both Decedent and Applicant/Plaintiff was issued, to wit policy 90AV54085U.

48. Applicant/Plaintiff obtained a death certificate on or about July 5, 2016.

49. Decedent's cause of death was undetermined.

50. On or about January 29, 2015, Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, was to have been employed by Rodrin Hot Shot, Inc., to be a family owned business.

51. However, rather than incorporate under by Rodrin Hot Shot, Inc., Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, decided to incorporate under R T Way Logistics, Inc., Articles of Incorporation filed April 8, 2015.

52. R T Way Logistics, Inc., was incorporated April 8, 2015, after the parties were married and approximately two (2) months after Applicant/Plaintiff made out an application for Life and Health Insurance with Defendant American Heritage Life Insurance Company.

53. On the application for Life and Health Insurance with Defendant American Heritage Life Insurance Company, is the section "Complete This Section for Persons to Be Insured."

54. In the proposed insured section, the proposed insured is identified as Rodrin R. Hinton, spouse.

55. In the section 'Complete This Section For The Person To Be Insured', the section for Employee identifies Employee, identified in Employee Section, as Candice Hinton.

56. In the section 'Complete This Section For The Person To Be Insured', the section for Spouse identifies Rodrin Hinton. Neither section is ever modified or corrected from January 29,

2015 to the date of Rodrin Hinton's death March 24, 2016.

57. In fact, from the January 29, 2015 until March 24, 2016, Defendant never informs Applicant/Plaintiff of any problems under the policy and continued to accept the premiums for approximately 18 months. Defendant did not investigate the information contained in the Jan. 29, 2015 application for life insurance policy for 18 months, leading Applicant/Plaintiff to believe there was an effective policy.

57. Rodrin Hot Shot, Inc. was never incorporated. As such, the public records for the State of Texas and Harris County did not ever show the business entity Rodrin Hot Shot, Inc.

58. In the section 'Complete This Section For The Person To Be Insured', the section contains the section identified as 'Actively Work'.

59. The application defines 'Actively Work' as:

"Actively at work means that he/she is actively at work now for wage or profit and has worked at least 20 hours each week performing all duties at his /her regular occupation at his/her regular place of employment for the last 3 months except for minor illness or injury of 1 week or less, or normal pregnancy."

60. Three (3) months prior to January 29, 2015, include the months: October 2014, November 2014, December 2014 and January 2015.

61. Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, submitted in response to her claim to Allstate Benefits, the following proof of Decedent's employment:

1. Employer All My Sons, Sept. 22, 2014 – Nov. 3, 2014 – 112.875 hours;
2. Employer All My Sons, W-2 2014, Wages \$1,128.75
3. Self-employed R T Way Logistics, Inc.
4. In addition, that Decedent was employed with 'Two Men and A Truck' for the period Feb. 4 – Feb. 28, 2016.

62. For each entity identified above, for the months identified in ¶¶ 16 and 61 above, Decedent actively worked for wage or profit and worked at least 20 hours each week performing all duties at his regular occupation at his regular place of employment. Decedent and Plaintiff/Applicant substantially complied with said requirement.

63. Again, on or about March 24, 2016, Decedent, Rodrin R. Hinton, died while in the custody of Harris County Jail as a result of callous indifference and/or conscious indifference of policies, practices and actions of Harris County officials, Nurse Cooper and various Harris County employees.

64. On July 13, 2016, 11 days after the certificate of death is issued and 18 months after having made application and paid premiums for the subject life insurance policy, Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, submitted her claim to Defendant, via Allstate Benefits.

65. On July 14, 2016, Allstate Benefits requested 'Copy of Mr. Hinton's 2014 and 2015 Income Tax return.

66. On November 1, 2016, Allstate denied the claim for the following reasons:

'1) On 8/26/16 Ms. Hinton stated in a statement 'Re: Employment verification for Rodrin R. Hinton, Rodrin R. Hinton was not employed ... I was the only one working in the home.'

2) In a phone call to our office on 8/22/16 Ms. Hinton relayed, "Mr Hinton did not work in 2014 and 2015 and did not file taxes for those years as stated on the letter received on 7/26/16. She sent her taxes to show that he didn't even file with her."

3) July 26, 2016 Letter from Candice Hinton in reply to our request for 2014 and 2015 tax returns for Mr. Hinton: "Re Rodrin's 2014 and 2015 Income Tax returns. Rodrin did not file taxes for both of those years."

67. Defendant returned premiums paid by Plaintiff on Nov. 17, 2016, in the sum of \$1,813.76. This check remains un-negotiated by Plaintiff.

68. The Application and definition do not, and did not, expressly require:

a. that Mr. Hinton earn money; and/or

b. that Mr. Hinton file taxes for the 3 months prior to Jan. 29, 2015.

69. Decedent was not required to have worked for 2014, but for 3 months prior to January 29, 2015.

70. Decedent was not required to have filed taxes for 2014 and/or 2015.

71. In addition, Defendant, as a matter of law, was not required to have provided Defendant a copy of Decedent's 2014 and/or 2015 tax returns.

72. The definition agreement expressly provide that - for the months October 1 - December 31, 2014 and for the month of January 1 - 29, 2015 - the Decedent (i) actively work for wage or

profit and (ii) has worked at least 20 hours each week performing all duties at his /her regular occupation at his/her regular place of employment for the last 3 months.

73. The documents in Defendant Allstate's possession reflect that the Decedent was employed, and self-employed, working for All My Sons Moving and Storage and RT Way Logistics for the stated period.

74. The definition does not expressly contractually require the Decedent to have earned money but that he actively work for wage. There is no requirement that Decedent file taxes for either 2014 and/or 2015.

75. Plaintiff has previously made demand for payment of \$150,000.00 and previously placed Defendant on notice of claim for breach of contract and violation of the Texas Deceptive Trade Practices Act.

76. Plaintiff, again on Feb. 26, 2020, placed Defendant on notice for:

a. Texas Insurance Code, Sec. 541.003, Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

b. Texas Insurance Code, Sec. 541.051, Misrepresentation Regarding Policy or Insurer (B) the benefits or advantages promised by the policy),

c. Texas Insurance Code, Sec. 541.060, Unfair Settlement Practices:

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person.

77. Applicant/Plaintiff asserts that in violation of Texas Insurance Code, 541.003, Defendant's use of the defined words 'Actively at Work' constitutes 'unfair or deceptive acts or practices' to wit: that American Heritage Life Insurance Company, by (i) including requirements not expressly included in the stated application and/or (ii) including definitions not expressly included in the stated application, engaged in 'unfair or deceptive acts or practices'.

78. Applicant/Plaintiff asserts that in violation of Texas Insurance Code, Sec. 541.051 (B), Misrepresentation Regarding Policy or Insurer, that the use of the terms 'Actively at Work', as applied by Defendant, denies to Applicant/Plaintiff the benefits or advantages promised by the policy, to wit: payment of \$150,000.00.

79. Applicant/Plaintiff asserts that in violation of Texas Insurance Code, Sec. 541.060, Unfair Settlement Practices, Defendant's use of the terms 'Actively at Work', to include that Decedent to have worked for 2014, but for 3 months prior to January 29, 2015, to provide tax returns for 2014 and/or 2015, and to provide tax returns for 2014 and/or 2015, constitute violations of :

Texas Insurance Code, Sec. 541.060, Unfair Settlement Practices:

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person.

80. Decedent, as a matter of law, was not required to have provided Defendant a copy of Decedent's 2014 and/or 2015 tax returns.

81. Applicant/Plaintiff asserts that Defendant's actions constitute a trade practice that is

defined to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

82. Pursuant to Sec. 541.151, Private Action for Damages Authorized, a person who sustains actual damages may bring an action against another person for those damages caused by the other person engaging in an act or practice: (1) defined by Subchapter B to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; or (2) specifically enumerated in Section 17.46(b), Business & Commerce Code, as an unlawful deceptive trade practice if the person bringing the action shows that the person relied on the act or practice to the person's detriment.

83. In addition to the above, per Sec. 541.152, Damages, Attorney Fees and Other Relief, (a) A plaintiff who prevails in an action under this subchapter may obtain: (1) the amount of actual damages, plus court costs and reasonable and necessary attorney's fees; (2) an order enjoining the act or failure to act complained of; or (3) any other relief the court determines is proper. (b) Except as provided by Subsection (c), on a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.

84. On February 26, 2020, Plaintiff's DTPA Notice letter was sent to Defendant – in writing:

a. contact Plaintiff's attorney this office within sixty (60) days of his receipt of this letter, so the parties might avoid unnecessary time, expense and additional attorney fees in the further litigation of this matter.

b. That Defendant was demanded to pay \$150,000.00, and attorney's fees of \$7,500.00 – for a total of \$157,500.00.

85. As of March 18, 2020, has not responded.

86. To date, Defendant has failed to perform as agreed.

87. Plaintiff assert that Defendant engaged in breach of contract, and deceptive trade practices.

88. Plaintiff asserts that Defendant intentionally withheld performance and deceived Plaintiff concerning Defendant's nonperformance.

89. Plaintiff sues for payment of \$150,000.00, plus treble damages, court costs and attorney's fees.

90. Plaintiff seeks recovery of unliquidated damages within the jurisdictional limits of this

court.

91. Additional damages. Defendant acted knowingly and/or intentionally, which entitles plaintiff to recover treble damages under Texas Business & Commerce Code section 17.50(b)(1).

92. Attorney fees. Plaintiff is entitled to recover reasonable and necessary attorney fees for prosecuting this suit under Texas Business & Commerce Code section 17.50(d), not less than \$7,500.00.

G. Count 2 – Breach of Contract

93. Plaintiff assert that Defendant breached the life insurance policy agreement entered into between Plaintiff and Defendant. To establish a breach of contract, Plaintiff need show 1. a valid contract existed, 2. Plaintiff performed or tendered performance, 3. Defendant breached the contract, and 4. Plaintiff was damaged by the breach.

94. Plaintiff both sought and acquired life insurance on the life of her husband, Rodrin R. Hinton, via policy 90AV54085U, from Defendant American Heritage Life Insurance Company.

95. Defendant, American Heritage Life Insurance Company, is life insurance company doing business in Harris County and may be sued under the DTPA.

96. On or about January 29, 2015, Applicant/Plaintiff made out an application for Life and Health Insurance with Defendant American Heritage Life Insurance Company.

97. A life insurance policy for both Decedent and Applicant/Plaintiff was issued, to wit policy 90AV54085U.

98. Applicant/Plaintiff obtained a death certificate on or about July 5, 2016.

99. Decedent's cause of death was undetermined.

100. On or about January 29, 2015, Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, was to have been employed by Rodrin Hot Shot, Inc., to be a family owned business.

101. However, rather than incorporate under by Rodrin Hot Shot, Inc., Decedent, Rodrin R. Hinton, and Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, decided to incorporate under R T Way Logistics, Inc., Articles of Incorporation filed April 8, 2015.

102. R T Way Logistics, Inc., was incorporated April 8, 2015, after the parties were married and approximately two (2) months after Applicant/Plaintiff made out an application for Life and

Health Insurance with Defendant American Heritage Life Insurance Company.

103. On the application for Life and Health Insurance with Defendant American Heritage Life Insurance Company, is the section “Complete This Section for Persons to Be Insured.”

104. In the proposed insured section, the proposed insured is identified as Rodrin R. Hinton, spouse.

105. In the section ‘Complete This Section For The Person To Be Insured’, the section for Employee identifies Employee, identified in Employee Section, as Candice Hinton.

106. In the section ‘Complete This Section For The Person To Be Insured’, the section for Spouse identifies Rodrin Hinton. Neither section is ever modified or corrected from January 29, 2015 to the date of Rodrin Hinton’s death March 24, 2016.

107. In fact, from the January 29, 2015 until March 24, 2016, Defendant never informs Applicant/Plaintiff of any problems under the policy and continued to accept the premiums for approximately 18 months. Defendant did not investigate the information contained in the Jan. 29, 2015 application for life insurance policy for 18 months, leading Applicant/Plaintiff to believe there was an effective policy.

108. Rodrin Hot Shot, Inc. was never incorporated. As such, the public records for the State of Texas and Harris County did not ever show the business entity Rodrin Hot Shot, Inc.

109. In the section ‘Complete This Section For The Person To Be Insured’, the section contains the section identified as ‘Actively Work’.

110. The application defines ‘Actively Work’ as:

“Actively at work means that he/she is actively at work now for wage or profit and has worked at least 20 hours each week performing all duties at his /her regular occupation at his/her regular place of employment for the last 3 months except for minor illness or injury of 1 week or less, or normal pregnancy.”

111. Three (3) months prior to January 29, 2015, include the months: October 2014, November 2014, December 2014 and January 2015.

112. Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, submitted in response to her claim to Allstate Benefits, the following proof of Decedent’s employment:

1. Employer All My Sons, Sept. 22, 2014 – Nov. 3, 2014 – 112.875 hours;
2. Employer All My Sons, W-2 2014, Wages \$1,128.75

3. Self-employed R T Way Logistics, Inc.
4. In addition, that Decedent was employed with 'Two Men and A Truck' for the period Feb. 4 – Feb. 28, 2016.

113. Again, on or about March 24, 2016, Decedent, Rodrin R. Hinton, died while in the custody of Harris County Jail as a result of callous indifference and/or conscious indifference of policies, practices and actions of Harris County officials, Nurse Cooper and various Harris County employees.

114. On July 13, 2016, 11 days after the certificate of death is issued and 18 months after having made application and paid premiums for the subject life insurance policy, Applicant/Plaintiff, Candice D. Matthews, f/k/a Candice D. Hinton, submitted her claim to Defendant, via Allstate Benefits.

115. On November 1, 2016, Allstate breached the policy and Allstate denied the claim for the following stated reasons:

'1) On 8/26/16 Ms. Hinton stated in a statement 'Re: Employment verification for Rodrin R. Hinton, Rodrin R. Hinton was not employed ... I was the only one working in the home.'

2) In a phone call to our office on 8/22/16 Ms. Hinton relayed, "Mr Hinton did not work in 2014 and 2015 and did not file taxes for those years as stated on the letter received on 7/26/16. She sent her taxes to show that he didn't even file with her."

3) July 26, 2016 Letter from Candice Hinton in reply to our request for 2014 and 2015 tax returns for Mr. Hinton: "Re Rodrin's 2014 and 2015 Income Tax returns. Rodrin did not file taxes for both of those years."

116. Defendant returned premiums paid by Plaintiff on Nov. 17, 2016, in the sum of \$1,813.76. This check remains un-negotiated by Plaintiff.

117. The Application and definition do not, and did not, expressly require:

- a. that Mr. Hinton earn money; and/or
- b. that Mr. Hinton file taxes for the 3 months prior to Jan. 29, 2015.

118. Decedent was not required to have worked for 2014, but for 3 months prior to January 29, 2015.

119. Decedent was not required to have filed taxes for 2014 and/or 2015.

120. In addition, Defendant, as a matter of law, was not required to have provided Defendant a copy of Decedent's 2014 and/or 2015 tax returns.

121. The definition agreement expressly provide that - for the months October 1 - December 31, 2014 and for the month of January 1 - 29, 2015 - the Decedent (i) actively work for wage or profit and (ii) has worked at least 20 hours each week performing all duties at his /her regular occupation at his/her regular place of employment for the last 3 months.

122. The documents in Defendant Allstate's possession reflect that the Decedent was employed, and self-employed, working for All My Sons Moving and Storage and RT Way Logistics for the stated period.

123. The definition does not expressly contractually require the Decedent to have earned money but that he actively work for wage. There is no requirement that Decedent file taxes for either 2014 and/or 2015.

124. Plaintiff has previously made demand for payment of \$150,000.00 and previously placed Defendant on notice of claim for breach of contract and violation of the Texas Deceptive Trade Practices Act.

125. Plaintiff, again on Feb. 26, 2020, placed Defendant on breach of contract and on notice for DTPA violations for violations of:

a. Texas Insurance Code, Sec. 541.003, Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

b. Texas Insurance Code, Sec. 541.051, Misrepresentation Regarding Policy or Insurer (B) the benefits or advantages promised by the policy),

c. Texas Insurance Code, Sec. 541.060, Unfair Settlement Practices:

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person.

126. To date, Defendant has failed to perform as agreed.

127. Plaintiff assert that Defendant engaged in breach of contract, and deceptive trade practices.

128. Plaintiff asserts that Defendant intentionally withheld performance and deceived Plaintiff concerning Defendant's nonperformance.

129. Plaintiff sues for payment of \$150,000.00, plus treble damages, court costs and attorney's fees.

130. Plaintiff seeks recovery of unliquidated damages within the jurisdictional limits of this court.

131. Plaintiff sues for payment of \$150,000.00, court costs and attorney's fees in a sum not less than \$7,500.00, to include compensatory damages.

132. Attorney fees. Plaintiff is entitled to recover reasonable and necessary attorney fees for prosecuting this suit under section 38.001 of the Texas Civil Practice and Remedies Code, and interest.

I. Conditions Precedent

133. All conditions precedent to plaintiff's claim for relief have been performed or have occurred.

J. Request for Disclosure

134. Under Texas Rule of Civil Procedure 194, plaintiff requests that defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

K. Prayer

135. For these reasons, plaintiff asks that the court issue citation for defendant to appear and answer, and that plaintiff be awarded a judgment against defendant for the following:

- a. Economic and actual damages.
- b. Treble damages.
- c. Prejudgment and postjudgment interest.
- d. Court costs.
- f. Attorney fees.
- g. All other relief to which plaintiff is entitled.

Respectfully submitted,

/S/ Jimmie L. J. Brown, Jr.

By: _____

Jimmie L. J. Brown, Jr.

Texas Bar No. 03141210

16310 Creeksouth Road

Houston, Texas 77068

Cell (713) 419-1021

Fax. (713) 583-1352

Email: elderjimmiebrown@gmail.com

Attorney for Plaintiff, Candice D. Matthews

/s/ Otha T. Carpenter

OTHA T. CARPENTER, ESQ.

ATTORNEY AT LAW

4606 FM 1960 Ste 400

Houston, TX 77069

713-227-2833 Office

281-315-8863 Fax

SBN: 03847500

Attorney for Plaintiff, Candice D. Matthews

saxofpraise@aol.com

/s/ Michael A. Davenport

MICHAEL A. DAVENPORT
DAVENPORT LAW OFFICE
4606 FM 1960 Ste 400
HOUSTON, TX 77069
281-586-2208
281-315-8863 Fax
SBN: 05418300
davenportlawoffices@comcast.net
Attorney for Plaintiff, Candice D. Matthews

ATTORNEYS FOR PLAINTIFF



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this April 21, 2020

Certified Document Number: 89992064 Total Pages: 19

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com

7019 0140 0000 5910 8577

p.2

CAUSE NO. 202018503

RECEIPT NO. 850935

75.00

CTM

TR # 73740556

PLAINTIFF: MATTHEWS, CANDICE D
vs.
DEFENDANT: AMERICAN HERITAGE LIFE INSURANCE

In The 234th
Judicial District Court
of Harris County, Texas
234TH DISTRICT COURT
Houston, TX

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of Harris

TO: AMERICAN HERITAGE LIFE INSURANCE BY SERVING C T CORPORATIONS SYSTEM

1999 BRYAN STREET SUITE 900 DALLAS TX 75201 - 3136

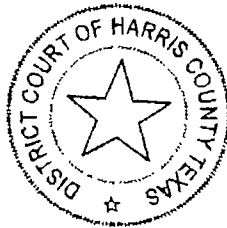
Attached is a copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

This instrument was filed on the 20th day of March, 2020, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 6th day of April, 2020, under my hand and seal of said Court.



Marilyn Burgess

Issued at request of:
DAVENPORT, MICHAEL A.
4606 FM 1960 W.
HOUSTON, TX 77069
Tel: (281) 586-2208
Bar No.: 5418300

MARILYN BURGESS, District Clerk
Harris County, Texas
201 Caroline, Houston, Texas 77002
(P.O. Box 4651, Houston, Texas 77210)

Generated By: CUERO, NELSON 7MM//11466765

CLERK'S RETURN BY MAILING

Came to hand the _____ day of _____, _____, and executed by mailing to Defendant certified mail, return receipt requested, restricted delivery, a true copy of this citation together with an attached copy of PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE to the following addressee at address:

(a) ADDRESSEE

ADDRESS

Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at

on _____ day of _____,
by U.S. Postal delivery to _____

This citation was not executed for the following reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy

RECORDER'S MEMORANDUM
This instrument is of poor quality
at the time of imaging

73740556

7019 0140 0000 5910 8577

CAUSE NO. 202018503

RECEIPT NO. 850935

75.00

CTM

TR # 73740556

PLAINTIFF: MATTHEWS, CANDICE D
vs.
DEFENDANT: AMERICAN HERITAGE LIFE INSURANCE

In The 234th
Judicial District Court
of Harris County, Texas
234TH DISTRICT COURT
Houston, TX

CITATION (CERTIFIED)

THE STATE OF TEXAS
County of Harris

TO: AMERICAN HERITAGE LIFE INSURANCE BY SERVING C T CORPORATIONS SYSTEM

1999 BRYAN STREET SUITE 900 DALLAS TX 75201 - 3136

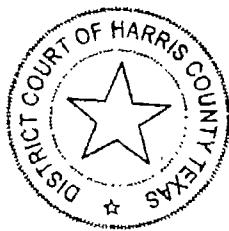
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Marilyn Burgess

Issued at request of:
DAVENPORT, MICHAEL A.
4606 FM 1960 W.
HOUSTON, TX 77069
Tel: (281) 586-2208
Bar No.: 5418300

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ADDRESS

Service was executed in accordance with Rule 106
(2) TRCP, upon the Defendant as evidenced by the return receipt incorporated herein and attached hereto at _____

on _____ day of _____,
by U.S. Postal delivery to _____

This citation was not executed for the following reason: _____

MARILYN BURGESS, District Clerk
Harris County, TEXAS

By _____, Deputy



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this April 21, 2020

Certified Document Number: 90191148 Total Pages: 2

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com



**Service of Process
Transmittal**

04/13/2020

CT Log Number 537528772

TO: L&R Home Office Intake Unit
Allstate Insurance Company
3075 Sanders Rd Ste G4A
Northbrook, IL 60062-7119

RE: Process Served in Texas

FOR: American Heritage Life Insurance Company (Domestic State: FL)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: CANDICE D. MATTHEWS, Pltf. vs. AMERICAN HERITAGE LIFE INSURANCE COMPANY, Dft.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 202018503

NATURE OF ACTION: Insurance Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Certified Mail on 04/13/2020 postmarked on 04/06/2020

JURISDICTION SERVED : Texas

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 04/13/2020, Expected Purge Date: 04/18/2020

Image SOP

Email Notification, L&R Home Office Intake Unit
LawSOPIntakeUnitCT@allstate.com

SIGNED: C T Corporation System
ADDRESS: 1999 Bryan St Ste 900
Dallas, TX 75201-3140

For Questions: 877-564-7529
MajorAccountTeam2@wolterskluer.com

Page 1 of 1 / DK

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.



HARRIS COUNTY DISTRICT CLERK
P.O. BOX 4651
HOUSTON, TEXAS 77210-4651



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neopostTM

04/06/2020

USIPOSTAGE



AMERICAN HERITAGE LIFE INSURANCE
c/o C T Corporations System
1999 Bryan Street, Suite 900
Dallas, Texas 75201-3136

CAUSE NO. 2020-18503

CANDICE D. MATTHEWS	§	IN THE DISTRICT COURT
	§	
v.	§	HARRIS COUNTY, TEXAS
	§	
AMERICAN HERITAGE LIFE INSURANCE	§	
COMPANY	§	234 TH JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

Defendant files its original answer and states:

ANSWER

1. **General Denial.** Subject to such admissions and stipulations as may be made at or before time of trial, Defendant denies generally and specially the material allegations in Plaintiff's Original Petition, pursuant to Tex. R. Civ. P. 92, and demands strict proof thereof in accordance with the requirements of the laws of this state.

AFFIRMATIVE DEFENSE

2. No benefits are payable under the subject life insurance policy issued by Defendant (the "Policy"), and the Policy is void and of no effect, and should be rescinded because of material misrepresentations on the application for insurance pursuant to Tex. Ins. Code §§ 705.001 *et seq.*

REQUESTED RELIEF

3. Defendant requests the following relief:
- (a) That Plaintiff take nothing by reason of her suit;
 - (b) That Defendant be dismissed with its costs; and
 - (c) That Defendant have such other and further relief, both general and special, at law and in equity, to which it may show itself justly entitled.

Dated: April 24, 2020

Respectfully submitted,

By: /s/ Andrew G. Jubinsky
Andrew G. Jubinsky
Texas Bar No. 11043000
andy.jubinsky@figdav.com

FIGARI + DAVENPORT, L.L.P.
901 Main Street, Suite 3400
Dallas, Texas 75202
Telephone: (214) 939-2000
Facsimile: (214) 939-2090

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on the parties listed below on April 24, 2020.

Jimmie L. J. Brown, Jr.
16310 Creeksouth Road
Houston, Texas 77068

Otha T. Carpenter, Attorney at Law
4606 FM 1960, Ste 400
Houston, Texas 77069

Michael A. Davenport
Davenport Law Office
4606 FM 1960, Ste 400
Houston, Texas 77069
Attorney for Plaintiff

/s/ Andrew G. Jubinsky
Andrew G. Jubinsky